

# THE FRA PLANTOOLS TERMS OF SERVICE AND PRIVACY POLICY

These Terms of Service ("**Terms**") govern your access to and use of any and all services provided by Fiduciary Risk Assessment, LLC and/or PlanTools, LLC (hereafter "**FRA PlanTools**" or "**Us**" or "**Our**"), including our various websites, web-based applications, mobile applications, APIs, email notifications, email newsletters, blog posts, articles, and/or whitepapers, (the "**Services**"), and any information, text, graphics, photos or other materials uploaded, downloaded or appearing on the Services (collectively referred to as "**Content**").

You (meaning You, Your company or employer, any agents, legal counsel, employees, assignees, suppliers, third parties, or any other party of which you have control and who uses our Services, including any party that uses our Services using your Password, as defined below, hereafter "**You**" or "**Your**") must read these Terms carefully. By registering for, creating an account, user name, or password, logging into, visiting and/or otherwise using the Services in any way, You indicate that You understand and intend these Terms to be the legal equivalent of a signed, written contract, and You accept the Terms as set forth herein and agree to be legally bound by them. If You do not agree to these Terms, please do not access Our Services. By accessing or using Our Services, You agree to be bound by these Terms.

## 1. Limited License

Subject to these Terms, we grant you a limited, non-exclusive, non-transferable, and revocable license to use our Services, unless a Service has been contracted for using a separate license agreement, in which case the terms of that separate license agreement will govern if they conflict with those found herein, subject to Your prior acceptance of that separate license agreement. We reserve all rights not expressly granted to You.

## **2. Assumption of Risk**

Use of the Services may require Internet access and that You accept additional terms of service.

Certain Services may display, include or make available content, data, information, applications or materials from third parties (“Third Party Materials”) or provide links to certain third party web sites. By using the Services, You acknowledge and agree that FRA PlanTools is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or web sites. FRA PlanTools does not warrant or endorse and does not assume and will not have any liability or responsibility to You or any other person for any third-party Services, Third Party Materials or web sites, or for any other materials, products, or services of third parties. Third Party Materials and links to other web sites are provided solely as a convenience to You.

You understand that by accessing any Third Party Materials, You may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, You agree to use the Services and Third Party Materials at Your sole risk and that FRA PlanTools shall not have any liability to You for content that may be found to be offensive, indecent, or objectionable.

Location data provided by the Services is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither FRA PlanTools, nor any of its content providers, guarantees the

availability, accuracy, completeness, reliability, or timeliness of stock information or location data displayed by any Services.

### **3. Financial Information**

Nothing included in the Services constitutes tax, legal, or investment advice. Before executing any securities transaction based upon information obtained through the Services, You should consult with a financial professional. Neither the information, nor any opinion, included in the Services constitutes a solicitation or offer by FRA PlanTools or its affiliates to buy or sell any securities or other financial instruments, nor shall any such security be offered or sold to any person in any jurisdiction in which such offer, solicitation, purchase, or sale would be unlawful under the securities laws of such jurisdiction. Decisions based on information included on the Services are the sole responsibility of You.

Data is dynamic and could be subject to reporting errors, timeliness and categorization discrepancies. The information reported by updated fund company literature, prospectuses and reporting services is often irreconcilable. As a result, the data provided in our Services should be viewed as indicative rather than definitive. The data emanates from sources believed to be reliable, but we have no control over the means or methods used for collection. As a result, we cannot guarantee accuracy or completeness.

**BEFORE ACQUIRING THE SHARES OF ANY MUTUAL FUND, ETF, COLLECTIVE FUND, SEPARATE ACCOUNT, MANAGED ACCOUNT, OR ANY OTHER TYPE OF SECURITY BY PURCHASE OR EXCHANGE, IT IS YOUR RESPONSIBILITY TO READ THE FUND'S PROSPECTUS OR CORRESPONDING DISCLOSURE MATERIALS.**

#### **4. FRA PlanTools is Not an ERISA Fiduciary**

You agree that in using any Service provided by FRA PlanTools that We do not act in any fiduciary capacity as defined in the Employee Retirement Income Security Act of 1974 (“ERISA”) towards You, Your clients, and/or Your retirement plan and retirement plan participants.

#### **5. Privacy Policy**

##### **a. Information Submitted By You**

All information or material submitted through the Services will be deemed to be the property of FRA PlanTools, unless a separately negotiated, signed, and valid license agreement exists that changes these Terms. By submitting any information or material to us through the Services, you grant us an unrestricted, irrevocable license to use, reproduce, display, perform, modify, transmit and distribute those materials or information. You also agree that FRA PlanTools is free to use for any purpose any ideas, concepts, know-how or techniques that you submit to us through the Services. FRA PlanTools shall not be subject to any obligations of confidentiality regarding submitted information, except as agreed to by FRA PlanTools in a separately negotiated, signed, and valid license agreement. You agree that FRA PlanTools may use submitted information for preparation of benchmarking and other statistical analysis.

##### **b. Obtaining Personal Information**

In the course of providing our Services, we may obtain non-public personal information which may come from sources such as account applications and other forms, from other written, electronic or verbal correspondence, from an advisory firm, financial adviser or consultant, and/or from information captured on our internet web sites.

The personal information we collect allows Us to keep You posted on Our latest product announcements, software updates, and upcoming events. It also helps Us to improve our Services, content, and advertising.

We also use personal information to help Us develop, deliver, and improve Our products, services, content, and advertising.

From time to time, We may use Your personal information to send important notices, such as communications about purchases and changes to Our terms, conditions, and policies. Because this information is important to your interaction with FRA PlanTools, you may not opt out of receiving these communications.

We may also use personal information for internal purposes such as auditing, data analysis, and research to improve FRA PlanTools' products, services, and customer communications.

### **c. Respecting Your Privacy**

As a matter of policy, we do not disclose any personal information gathered by us to non-affiliated third parties, except as required for our everyday business purposes, such as to process transactions or service an account, or permitted by law. As is common in the industry, non-affiliated companies may from time to time be used to provide certain services. We may enter into joint marketing arrangements with other companies. We may also retain marketing and research service firms to conduct research on customer satisfaction. These companies may have access to personal information, but are solely permitted to use this information to provide the specific service or as otherwise permitted by law.

### **d. Sharing Information with Third Parties**

We reserve the right to disclose or report personal information to non-affiliated third parties, in limited circumstances, where we believe in good faith that disclosure is required under law to

cooperate with regulators or law enforcement authorities, or to protect our rights or property.

#### **e. Procedures to Safeguard Private Information**

We take seriously our obligation to safeguard personal information. In addition to this policy, we have also implemented procedures that are designed to restrict access to personal information only to internal personnel who need to know that information in order to provide Services. In addition, we have physical, electronic, and procedural safeguards in place to guard personal information.

The security of your information is important to us. When you enter sensitive information using our Services, we encrypt the transmission of that information using secure socket layer technology (SSL).

We follow generally accepted standards to protect the information submitted to us, both during transmission and once we receive it. No method of electronic transmission or storage is 100% secure, however. Therefore, we cannot guarantee its absolute security. If you have any questions about security on our website, you can contact us at [info@fraplantools.com](mailto:info@fraplantools.com).

#### **f. Disposal of Confidential Records**

We will dispose of records that are knowingly derived from data received from personal information that ensures the confidentiality of the data is maintained.

#### **g. Cookies**

We may use cookies and similar technologies, including mobile device identifiers, to help us recognize you, improve your experience, increase security, measure use of our Services, and serve advertising. You can control cookies through your browser

settings and other tools. By using our Services, you consent to the placement of cookies and beacons in your browser.

#### **h. Changes**

FRA PlanTools is always seeking to improve the Services we offer You. We often introduce new features, some of which may result in the collection of new information. Furthermore, new partnerships or corporate acquisitions may result in new features, and we may potentially collect new types of information.

#### **i. California's Shine the Light Law**

California Civil Code Section 1798.83, known as the "Shine The Light" law, permits our customers who are California residents to request and obtain from us a list of what personal information (if any) we disclosed to third parties for direct marketing purposes in the preceding calendar year and the names and addresses of those third parties. Requests may be made only once a year and are free of charge. Under Section 1798.83, FRA PlanTools currently does not share any personal information with third parties for their direct marketing purposes.

### **6. Advertisements**

Some Services may be supported by advertising revenue and may display advertisements and promotions on the Service. The manner, mode and extent of advertising on Our Services are subject to change. As consideration for your use of the Services, you agree that We may place such advertising and that We shall not be responsible or liable for any loss or damage of any sort incurred by you as a result of the presence of such advertisers on the Services or your subsequent dealings with advertisers.

### **7. Copyright**

You agree that the Services contain proprietary content, information and material that is protected by applicable intellectual property and other laws, including but not limited to

copyright, and that You will not use such proprietary content, information or materials in any way whatsoever except as permitted by any applicable separate license agreements between You and FRA PlanTools. No portion of the Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services, in any manner, and You shall not exploit the Services in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity.

Nothing shall be construed as granting a license or right to use any image, trademark, service mark or logo, which is the property of FRA PlanTools or its third-party information providers, suppliers, partners, or licensors. FRA PlanTools reserves all rights with respect to its proprietary information or material and will enforce such rights to the full extent of applicable copyright and trademark law.

## **8. Improper Use**

You further agree not to use the Services in any manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party, and that FRA PlanTools is not in any way responsible for any such use by You, nor for any harassing, threatening, defamatory, offensive or illegal messages or transmissions that You may receive as a result of using any of the Services.

Except as otherwise stated in these Terms or as expressly authorized by FRA PlanTools in writing, you may not:

- Use the Services in any manner that could damage or overburden any server that hosts the Services, any network connected to the server, as all servers have limited capacity and are used by many people;
- Use the Services in any manner that would interfere with another party's use of the Services;



- Use the Services or its contents in any manner that could create an impression of affiliation, sponsorship or endorsement by FRA PlanTools; or
- Try to improperly gain access to the Services for any purpose other than the limited license you have been granted.

## **9. Online Payments**

You may be able to purchase Services using a credit card, whether online, over the phone, or in person. We accept credit cards issued only by U.S. banks. If a credit card account is being used for a transaction, FRA PlanTools may obtain preapproval for an amount up to the amount of the payment. If you enroll to make recurring payments automatically, all charges and fees will be billed to the credit card you designate during the setup process. If you want to designate a different credit card or if there is a change in your credit card, you must change your information online. This may temporarily delay your ability to make online payments while we verify your new payment information.

You represent and warrant that if you are making online payments that (i) any credit card, debit card and bank account information you supply is true, correct and complete, (ii) charges incurred by you will be honored by your credit/debit card company or bank, (iii) you will pay the charges incurred by you in the amounts posted, including any applicable taxes, and (iv) you are the person in whose name the card was issued and you are authorized to make a purchase or other transaction with the relevant credit card and credit card information.

## **10. Termination**

We reserve the right to suspend or end the Services at any time, with or without cause, and with or without notice. For example, we may suspend or terminate your use if you are not complying with these Terms, or use the Services in any way that would cause us legal liability or disrupt others' use of the Services. If we

suspend or terminate your use, we will try to let you know in advance and help you retrieve data, though there may be some cases (for example, repeatedly or flagrantly violating these Terms, a court order, or danger to other users) where we may suspend immediately.

## **11. Use Outside the United States**

In addition, Services, third party services and Third Party Materials that may be accessed from, displayed on or linked to are not available in all languages or in all countries. FRA PlanTools makes no representation that such Services and Materials are appropriate or available for use in any particular location. To the extent You choose to access such Services or Materials, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws.

## **12. Subject to Change**

FRA PlanTools, and its licensors, reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will FRA PlanTools be liable for the removal of or disabling of access to any such Services. FRA PlanTools may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

FRA PlanTools also reserves the right to change, modify, add to, or remove portions of these Terms at any time for any reason. We suggest that you review the Terms periodically for changes. Such changes shall be effective immediately upon posting. You acknowledge that by accessing the Site after we have posted changes to these Terms, you are agreeing to the Terms as modified.

## **13. Timeliness of Content**

All content included in the Services is presented only as of the date published or indicated, and may be superseded by

subsequent market events or for other reasons. In addition, You are responsible for setting the cache settings on your browser to ensure You are receiving the most recent data.

#### **14. Password Security and Notification**

Certain Services are protected by passwords or require a login and are restricted to authorized users only. You may not obtain unauthorized access to such Services, or to any other protected materials or information, through any means not intentionally made available by FRA PlanTools for your specific use. If you have a Password for access to non-public Services, you are solely responsible for all activities that occur in connection with your Password. Accordingly, you should take all reasonable steps to protect the confidentiality of your Password. Notify FRA PlanTools immediately if you become aware of any disclosure, loss, theft or unauthorized use of your Password.

#### **15. Morningstar, Inc.**

Our Services may include proprietary investment data provided by Morningstar, Inc. and subject to a separate contract between FRA PlanTools and Morningstar, Inc. FRA PlanTools does not own this data nor does it control the terms and conditions of the contract to which it is subject.

You acknowledge and agree that any Morningstar data included in our Services that may be made available is subject to a licensing agreement between FRA PlanTools and Morningstar, Inc. and may not be distributed other than as included in our Services.

You further acknowledge that certain of the information contained in our Services may be proprietary to Morningstar, Inc. and/or its content providers; and thus may not be copied or distributed and is not warranted to be accurate, complete or timely. You also acknowledge that any Service which includes Morningstar data must include Morningstar's disclosures at the time of delivery;

and any report or output created using Morningstar data is not for participant use. Neither Morningstar, Inc. nor its content providers are responsible for any damages or losses arising from any use of this information. Past performance of investments is no guarantee of future results.

## **16. Apple Store Applications**

Any Services provided to you through the Apple App Store are hereafter referred to as the “Licensed Application.”

### **a. Scope of License:**

The license granted to You for the Licensed Application by Us is limited to a non-transferable license to use the Licensed Application on any iPhone or iPod touch that You own or control and as permitted by the Usage Rules set forth in Section 9.b. of the App Store Terms and Conditions (the “Usage Rules”). This license does not allow You to use the Licensed Application on any iPod touch or iPhone that You do not own or control, and You may not distribute or make the Licensed Application available over a network where it could be used by multiple devices at the same time. You may not rent, lease, lend, sell, redistribute or sublicense the Licensed Application. You may not copy (except as expressly permitted by this license and the Usage Rules), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Licensed Application, any updates, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Licensed Application). Any attempt to do so is a violation of the rights of FRA PlanTools and its licensors. If You breach this restriction, You may be subject to prosecution and damages. The terms of the license will govern any upgrades provided by Us that replace and/or supplement the original Licensed Application, unless such upgrade is accompanied by a separate license in which case the terms of that license will govern.

## **b. Consent to Use of Data:**

You agree that FRA PlanTools may collect and use technical data and related information, including but not limited to technical information about Your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to You (if any) related to the Licensed Application. FRA PlanTools may use this information, as long as it is in a form that does not personally identify You, to improve its products or to provide services or technologies to You.

## **c. Payments and Refunds**

All sales of the Licensed Application, including in-app purchases, are final. This includes in-app purchases that result from user error such as the improper submission of information, if the in-app purchase requires it.

Prices for products offered via the Licensed Application may change at any time, and the Services do not provide price protection or refunds in the event of a price reduction or promotional offering.

If a product becomes unavailable following a transaction but prior to download, your sole remedy is a refund. If technical problems prevent or unreasonably delay delivery of your product, your exclusive and sole remedy is either replacement or refund of the price paid, as determined by FRA PlanTools.

Your use of the Licensed Application includes the ability to enter into agreements and/or to make purchases electronically. **YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY SUCH AGREEMENTS AND TO PAY FOR SUCH PURCHASES. YOUR AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO ALL TRANSACTIONS YOU ENTER**

INTO ON THIS SITE, INCLUDING NOTICES OF CANCELLATION, POLICIES, CONTRACTS, AND APPLICATIONS. In order to access and retain your electronic records, you may be required to have certain hardware and software, which are your sole responsibility.

**d. Termination:**

The license is effective until terminated by You or FRA PlanTools. Your rights under this license will terminate automatically without notice from FRA PlanTools if You fail to comply with any term(s) of this license. Upon termination of the license, You shall cease all use of the Licensed Application, and destroy all copies, full or partial, of the Licensed Application.

**e. Special Provisions**

You may not use or otherwise export or re-export the Licensed Application except as authorized by United States law and the laws of the jurisdiction in which the Licensed Application was obtained. In particular, but without limitation, the Licensed Application may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Licensed Application, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

The Licensed Application and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through

227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-  
rights reserved under the copyright laws of the United States.

## **17. Notification Procedures**

FRA PlanTools reserves the right to determine the form and means of providing notifications to You, and You agree to receive legal notices electronically if we so choose.

## **18. Assignments**

These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by FRA PlanTools without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

## **19. No Warranty**

NO WARRANTY: YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND FRA PLANTOOLS HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. FRA PLANTOOLS DOES NOT WARRANT

AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SERVICES, THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FRA PLANTOOLS OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

## **20. Limitation of Liability**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL FRA PLANTOOLS BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF FRA PLANTOOLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU.

You expressly absolve and release FRA PlanTools and its officers, directors, employees, shareholders, legal representatives, attorneys, agents, successors and assigns, from any claim of harm



resulting from a cause beyond its control including, but not limited to, the failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, computer viruses or software failures, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes or other labor problems, wars, acts of domestic or foreign terrorism or governmental restrictions.

In exchange for using the Services, You agree to indemnify and hold FRA PlanTools, its officers, directors, employees, affiliates, agents, licensors and suppliers harmless against any and all claims, losses, liability, costs and expenses (including but not limited to attorneys' fees) arising from your use of the Services, from your violation of these Terms or from any decisions that you make based on such information.

In no event shall FRA PlanTools's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

## **21. Arbitration**

For any dispute You have with FRA PlanTools, You agree to first contact Us and attempt to resolve the dispute with Us informally. If FRA PlanTools has not been able to resolve the dispute with You informally, We each agree to resolve any claim, dispute, or controversy (excluding claims for injunctive or other equitable relief) arising out of or in connection with or relating to these Terms by binding arbitration by the American Arbitration Association ("AAA") under the Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes then in effect for the AAA, except as provided herein. Unless You and FRA PlanTools agree otherwise, the arbitration will be conducted in Mecklenburg County, North Carolina. Each party will be responsible for paying any AAA filing, administrative and arbitrator fees in accordance with AAA rules. The award rendered

by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction, subject to the Limitation of Liability provision above. Nothing in this Section shall prevent either party from seeking injunctive or other equitable relief from the courts for matters related to data security, intellectual property or unauthorized access to the Service.

ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND FRA PLANTOOLS ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

## **22. Governing Law**

The laws of the State of North Carolina govern this license and Your use of the Services. Your use of the Services may also be subject to other local, state, national, or international laws.

If you take legal action relating to these Terms, you agree to file such action only in the North Carolina state court located in Charlotte, NC, or the United States District Court for the Western District of North Carolina, and you consent and submit to the personal jurisdiction of those courts for the purpose of litigating any action with FRA PlanTools.

## **23. Integration and Severability**

If any provision of these Terms is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed

severable from these Terms and will not affect the validity and enforceability of the remaining provisions.

#### **24. Entire Agreement**

The preceding Terms represent the entire agreement between FRA PlanTools and You relating to the subject matter herein, unless a separately negotiated, signed, and valid license agreement exists.